

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
Amendment of the Commission's Rules to )  
Establish Part 27, the Wireless ) GN Docket No. 96-228  
Communications Service ("WCS") )

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**COMMENTS OF APCO**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking, FCC 96-441 (released November 12, 1996), in the above-captioned proceeding.

APCO is the nation's oldest and largest public safety communications organization, with over 12,000 members involved in the management and operation of law enforcement, fire, emergency medical, and other vital public safety communications systems. APCO is the FCC's certified frequency coordinator for the Part 90 Police Radio Service, Local Government Radio Service, and for all 800 MHz public safety channels. APCO appears frequently before the Commission and other government bodies on a wide range of communications matters of particular concern to state and local government public safety agencies.

The recently adopted Omnibus Consolidated Appropriations Act ("OCA Act") requires the Commission to reallocate the 2305-2320/2345-2360 MHz (or "2.3 GHz") band for

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wireless services, and to assign those frequencies through competitive bidding.<sup>1</sup> This effectively prevents public safety agencies from ever obtaining licenses for this spectrum, as they will never be in position to compete with commercial entities in a spectrum auction. Yet, the OCA Act also requires the Commission to take into account the needs of public safety users in its allocation and assignment of this spectrum.<sup>2</sup> These are directly contradictory requirements which are difficult to reconcile in any meaningful way.

Congress has often expressed concern that the increasing reliance on auctions for assigning radio spectrum is making it far more difficult for public safety agencies to obtain the spectrum they need for their critical operations. Indeed, the Commission's basic authority to conduct auctions was expressly conditioned on its completion of a study of and plan to meet public safety requirements.<sup>3</sup> More recently, the Chairman and Ranking Member of the House Commerce Committee stated in a joint letter that

If spectrum use decisions are made based on short term budgetary expediency, the result will short-change the American people. Our public safety agencies will simply have to do without – despite an immediate need for additional channels. In the alternative, they may have to bid against wealthy cellular telephone or satellite companies that want to provide some radio based service, and thereby costing local taxpayers an enormous amount of money. Overall spectrum policy should be set after a considered and deliberative effort to address the many complex questions it presents, not on a piecemeal basis as political needs arise.<sup>4</sup>

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<sup>1</sup> Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996).

<sup>2</sup> *Id.*

<sup>3</sup> 47 U.S.C. §309(j).

<sup>4</sup> Letter from Chairman Thomas J. Bliley, Jr. and the Honorable John D. Dingell to Speaker Newt Gingrich, Minority Leader Richard Gephardt, Chairman Bob Livingston and the Honorable David R. Obey (September 18, 1996).

The statutory public safety mandate contained in the OCA Act is a further reflection of this deep seated congressional concern. Unfortunately, however, the current statutory mandate to auction the 2.3 GHz bands severely limits the Commission's ability to take effective action in this proceeding. In this regard, the statute reflects just that type of ad hoc short-term spectrum decisionmaking criticized in the above joint letter.

Public safety agencies will never be able to obtain spectrum in an auction as they lack the resources to compete with those seeking to use the spectrum for commercial, revenue raising, purposes. Moreover, the procedures for raising and appropriating public funds are far too lengthy and complex to permit a government agency to respond in the rapid fire environment of spectrum auctions. On a more fundamental level, state and local governments should never be required to pay the federal government for the right to use the radio spectrum for basic governmental activities such as the protection of life and property.

The inability of public safety to obtain access to the 2.3 GHz band in an auction environment is particularly troublesome as the band does have some potential for meeting certain public safety spectrum needs. It is important to emphasize, however, that, in general, the 2.3 GHz band is not appropriate for most public safety communications operations. While mobile radio operations are possible in the 2 GHz range, as evidenced by PCS, the need for very small cell sites to provide adequate coverage (including critical in-building penetration) renders the band an unlikely home for public safety mobile systems. APCO has seen industry estimates indicating that the cost of building a 2300 MHz wide-area mobile system with in-building coverage could be as much as 17 times the cost of a comparable system in the 800 MHz band. This obviously is cost-prohibitive for a public agency.

Nevertheless, there are some important public safety applications that could use this band. One such use may be for public safety airborne and “mobile” video operations in the field, which are becoming increasingly important for command and control and surveillance operations.<sup>5</sup> There are some operations of this type currently operating in the 2.4 GHz band. The proximity of the 2.3 GHz band to current broadcast auxiliary operation at 1990-2110 MHz further suggests that it could be appropriate for such public safety video use. Certain other fixed and temporarily fixed public safety operations could also operate in the band.<sup>6</sup>

Therefore, since allocating the 2.3 GHz band through auction makes it impossible to meet the needs of public safety agencies, the Commission should confer with Congress and, if necessary, seek appropriate legislative authority to allocate a portion of the 2.3 GHz band for public safety outside of the auction process. Among other considerations, this process should explore the possibility of meeting the budgetary objectives of the OCA Act while at the same time allocating a viable segment of the 2.3 GHz band on a non-auction basis for public safety use.

The Commission asks in the NPRM, at ¶21, whether it should "assign this spectrum with a public interest obligation to contribute towards the needs identified by the public safety community." This could be done, for example, by requiring auction winners to set aside a portion of the spectrum for public safety use. APCO would welcome such a provision, at least to the extent that public safety could use the spectrum without payment and maintain de facto control of its use. Another approach, which would certainly require Congressional action, is for a

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<sup>5</sup> See PSWAC Final Report at Sections 4.1.10 and 4.2.16.

<sup>6</sup> More detailed information is not available at this time, due to the very short comment period and the fact that this band had not previously been considered as available for services other than DARS.

portion of the proceeds from the auction of the 2.3 GHz band to be targeted for funding public safety communications systems in other frequency bands. APCO suggests that the Commission recommend such an approach to Congress, which would complement the Commission's action in other proceedings to allocate new radio spectrum for public safety.

The Commission also inquires to what extent public safety would benefit from the allocation of the spectrum for commercial wireless services that may offer communications capability to public safety agencies. While that may be of some limited benefit, it will not offset the spectrum requirements identified by PSWAC. APCO has two fundamental reservations regarding this proposal.

First, the Commission does not appear to be willing to designate the type of wireless services that would be eligible to hold licenses in the band, making it difficult to determine at this stage whether licensees will offer services that would be even remotely beneficial to public safety. Such open-ended allocations are, in APCO's opinion, an abdication of the Commission's statutory obligation to allocate radio spectrum in the public interest. APCO opposed the creation of the General Wireless Communications Service, and opposes a similar allocation in this proceeding.

Second, even if the specific commercial use of the spectrum were known, commercial offerings in the band will, at most, satisfy a very small portion of public safety communications needs. The vast majority of the public safety spectrum needs identified by PSWAC are for mission-critical and other communications that will need to be provided through systems owned and operated by public safety agencies. PSWAC recognized that few

commercial offerings will provide the ubiquitous coverage, reliability, instantaneous access, and security of a dedicated "private" public safety radio system.<sup>7</sup> Those are essential characteristics of any communications system used for the protection of life and property. The final spectrum recommendations contained in the PSWAC final report (i.e., 2.5 MHz immediately, 25 MHz within 5 years and 70 MHz within 15 years) are based on calculations that take into consideration the potential role of commercial services. Specifically, the Spectrum Requirements Subcommittee of PSWAC had estimated that only ten percent of future public safety spectrum requirements could be met by commercial services. Perhaps commercial licensees in the 2.3 GHz band could provide a portion of that ten percent. Thus, to that limited extent, APCO would welcome incentives intended to encourage commercial licensees in the band to provide service to public safety agencies. That however, will not diminish the far more important need for the FCC to allocate additional spectrum for exclusive public safety use, consistent with the recommendations of the PSWAC final report.

In conclusion, APCO would welcome any FCC efforts to encourage the ability of public safety agencies to benefit from the allocation of the 2305-2320/2345-2360 MHz band. However, as demonstrated above, any allocation of the band can have only a very limited impact on the public safety spectrum requirements identified by PSWAC. The best way for the Commission to "take into account the needs of public safety radio services" is through the specific allocation for public safety use in portions of the spectrum where public safety has the greatest needs. In particular, the Commission must allocate spectrum below 1 GHz for direct

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<sup>7</sup> See, e.g., PSWAC Final Report at 24, Spectrum Requirements Subcommittee Report at 31 and App. B (Motorola White Paper), Transition Subcommittee Report at 35, Technology Subcommittee Report at 54.

public safety use, e.g., by reallocating a portion of current television spectrum to public safety as suggested in the digital television (DTV) proceeding.

Respectfully submitted,

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